

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE REGIONS MORGAN KEEGAN
SECURITIES, DERIVATIVE and ERISA
LITIGATION

This Document Relates to:

*In re Regions Morgan Keegan
Open-End Mutual Fund Litigation,*
No. 2:07-cv-02784-SHM-dkv

No. 2:09-md-02009-SHM

Judge Samuel H. Mays, Jr.

Magistrate Judge Diane K. Vescovo

**SETTLING DEFENDANTS' MEMORANDUM IN SUPPORT OF JOINT
MOTION FOR PRELIMINARY APPROVAL OF PARTIAL SETTLEMENT
AND APPROVAL OF NOTICE TO SETTLEMENT CLASS MEMBERS**

Defendants Helios Select Fund, Inc. (formerly Morgan Keegan Select Fund, Inc.),
Helios Select Short Term Bond Fund (formerly Regions Morgan Keegan Select Short
Term Bond Fund), Helios Select Intermediate Bond Fund (formerly Regions Morgan
Keegan Select Intermediate Bond Fund) and Helios Select High Income Fund (formerly
Regions Morgan Keegan Select High Income Fund) (collectively, the “Funds” or “Settling
Defendants”) respectfully submit this Memorandum in Support of Lead Plaintiffs’ and
Settling Defendants’ Joint Motion for Preliminary Approval of Partial Settlement and
Approval of Notice to Settlement Class Members.

As this Court has been advised previously, including in the Status Report dated
November 30, 2010 filed by the Funds in the *Landers* derivative action and the
Memorandum of Understanding (“MOU”) filed therewith¹, the Funds have reached a

¹ *Landers v. Morgan Asset Management, Inc.*, No. 2:08-cv-02260-SHM-dkv (W.D. Tenn.), ECF No. 98.

settlement of the single claim in this action against them, whereby without admitting or denying liability but consenting to the Court's jurisdiction, judgment is to be entered against only the Funds on the Section 11 claim against them in this litigation, placing the putative settlement class in the position of a judgment creditor of the Funds; the judgment debt is to be satisfied solely out of recovery by the Funds on their derivative claims in the *Landers* action, as provided more fully in the MOU. As the Court has acknowledged previously, this proposed partial settlement would resolve the case against the Funds in this action. (ECF No. 289 at 2.)

The proposed partial settlement represents the most efficient means of resolving the outstanding claims against the Funds, which are in liquidation², while at the same time minimizing expenses. For the reasons discussed more fully in Nominal Defendants' Memorandum in Support of Joint Motion for Approval of Rule 23.1 Notice to Shareholders and for Final Approval of the Memorandum of Understanding, as filed by the Funds in the *Landers* action today³, the settlement was authorized by the New Board of the Funds in exercise of its business judgment.

CONCLUSION

For the reasons outlined above and those separate reasons outlined in Lead Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Approval of Partial Settlement, the undersigned respectfully requests that the Court (1) grant preliminary approval of the Partial Settlement; (2) conditionally certify the Settlement Classes and Settlement Class Periods solely for purposes of the Partial Settlement with the Lead Plaintiffs; and (3) approve the proposed form and method of giving notice to the

² See *Landers*, No. 2:08-cv-02260-SHM-dkv, ECF No. 92 at 8.

³ *Landers*, No. 2:08-cv-02260-SHM-dkv, ECF No. 104.

Settlement Classes and direct that such notice be given by approving the proposed Notice Order submitted with the Joint Motion for Preliminary Approval of Partial Settlement and Approval of Notice to Settlement Class Members.

Dated this 14th day of March, 2011.

Respectfully submitted,

s/ Kevin C. Logue

Kevin C. Logue

PAUL, HASTINGS, JANOFSKY &
WALKER LLP

75 East 55th Street

New York, NY 10022

Tel: (212) 318-6000

Fax: (212) 319-4090

kevinlogue@paulhastings.com

Attorneys for Defendants Helios Select Fund, Inc., Helios Select Short Term Bond Fund, Helios Select Intermediate Bond Fund and Helios Select High Income Fund (formerly Morgan Keegan Select Fund, Inc., Regions Morgan Keegan Select Short Term Bond Fund, Regions Morgan Keegan Select Intermediate Bond Fund and Regions Morgan Keegan Select High Income Fund, respectively)

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2011, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following and/or served the following via U.S. Mail:

APPERSON, CRUMP & MAXWELL, PLC
CHARLES D. REAVES, ESQ.
JEROME A. BROADHURST, ESQ.
6070 Poplar Avenue, 6th Floor
Memphis, TN 38119-3954

BASS BERRY & SIMS PLC
MICHAEL L. DAGLEY, ESQ.
MATTHEW M. CURLEY, ESQ.
W. BRANTLEY PHILLIPS, JR., ESQ.
150 Third Avenue South, Suite 2800
Nashville, TN 37201

BASS BERRY & SIMS PLC
SHEPHERD D. TATE, ESQ.
MICHAEL A. BRADY, ESQ.
100 Peabody Place, Suite 900
Memphis, Tennessee 38103-3672

PURSLEY LOWERY MEEKS LLP
R. HAL MEEKS, JR., ESQ.
ROBIN A. BESNAW, ESQ.
260 Peachtree Street, NW
Suite 2000
Atlanta, GA 30303

MAYNARD COOPER & GALE PC
PETER S. FRUIN
2400 Regions Harbert Plaza
1901 Sixth Avenue North
Birmingham, AL 35203

KIRKLAND & ELLIS, LLP
TIMOTHY DUFFY, ESQ.
EMILY NICKLIN, ESQ.
KRISTOPHER RITTER, ESQ.
300 North LaSalle
Chicago, IL 60654

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC**
LEO BEARMAN, ESQ.
EUGENE PODESTA, ESQ.
165 Madison Avenue
First Tennessee Building
Memphis, TN 38103

K&L GATES LLP
JEFFREY B. MALETTA, ESQ.
NICOLE A. BAKER, ESQ.
1601 K Street, NW
Washington, D.C. 20006-1600

**SUTHERLAND ASBILL & BRENNAN,
LLP**
S. LAWRENCE POLK, ESQ.
PETER J. ANDERSON, ESQ.
999 Peachtree Street NE
Atlanta, GA 30309

SULLIVAN & CROMWELL LLP
DAVID B. TULCHIN, ESQ.
DAVID E. SWARTS, ESQ.
D. ANDREW PIETRO, ESQ.
125 Broad Street
New York, New York 1004

s/ Kevin C. Logue
Kevin C. Logue